

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
SEATTLE STEAM CORPORATION, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 78-120

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of three \$250 civil penalties for alleged violations of Section 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, at a formal hearing on June 26, 1978 in Seattle, Washington. David Akana presided.

Appellant appeared through its representatives, Frank W. Marshall and E. E. Stephens; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21E.260, respondent has filed a certified copy  
5 of its Regulation I and amendments thereto which are noticed.

6 II

7 Appellant owns and operates a Riley steam boiler at its place of  
8 business, 1319 Western Avenue, Seattle, Washington. All alleged emissions  
9 of air contaminants came from the Riley boiler.

10 III

11 On March 30, 1978 at about 9:00 a.m., the Riley boiler was being  
12 tested with appellant and respondent in attendance. The test revealed  
13 that the boiler emissions were within the weight rate standard of  
14 Regulation I. An inspector, who was watching the plume over an hour-long  
15 period, recorded a total of 12-3/4 minutes of readings of 1-1/2 to 4-1/2  
16 on the Ringelmann Chart and 30 to 50 percent opacity. During the  
17 observation period, the smoke changed from a gray color to blue, then  
18 again to gray. For the foregoing event, appellant was issued a notice  
19 of violation and was assessed a \$250 civil penalty which it appealed.

20 IV

21 On April 7, 1978 at about 2:30 p.m., respondent's inspector visited  
22 appellant's location in response to a complaint and saw a blue smoke  
23 plume coming from appellant's Riley boiler stack. Over an 18 minute-long  
24 observation, the inspector recorded 8 minutes of smoke with an opacity  
25 ranging between 25 and 80 percent. For the foregoing event, appellant  
26 was sent a notice of violation from which followed a \$250 civil penalty.

27 FINAL FINDINGS OF FACT,  
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and an appeal.

V

On April 12, 1978 at about 9:22 a.m., respondent's inspector again visited appellant's location in response to a complaint and there saw a white smoke plume coming from appellant's Riley boiler stack. The inspector recorded an opacity of 60 to 80 percent for ten consecutive minutes. Appellant was issued a notice of violation from which followed a \$250 civil penalty and this appeal.

VI

Respondent's Regulation I, Section 9.03(b), makes it unlawful to cause or allow the emission of smoke for more than three minutes in any one hour which is darker in shade than No. 1 on the Ringelmann Chart or which is of an opacity equal to or greater than 20 percent.

Section 3.29 provides for a penalty of up to \$250 per day for each violation of Regulation I.

VII

Appellant furnishes central heat to many parts of Seattle and to over 400 customers who would otherwise be required to provide their own individual systems. In so doing, appellant has reduced the number of individual chimneys, which would have been required, to three which it now owns. The problem in the instant matter concerns only one boiler which is attached to one of these chimneys. This boiler is one of the most efficient boilers in the city. Appellant was not aware of any smoking problem with the boiler until the sulfur content of the oil used increased from 1/2 percent to 1.5 percent. Since then, appellant has been seeking to find a reason for the smoke and has tried to eliminate the smoke by

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LASEAND ORDER

1 changing burner tips, adjusting the oil temperature, and adding cheric. .  
2 Appellant continues to search for an answer and its consultant believes  
3 that the major part of the plume is due to water vapor and that the  
4 change in opacity is due to meteorological conditions.

5 VIII

6 Appellant has three prior notices of violation from which one \$50  
7 and one \$250 civil penalties were assessed. Apparently no civil penalty  
8 was issued for one of the violations because of an upset or breakdown  
9 condition which was reported to respondent.

10 IX

11 Any Conclusion of Law which should be deemed a Finding of Fact is  
12 hereby adopted as such.

13 From these Findings the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 Appellant violated Section 9.03(b) on March 30, April 7, and  
17 April 12, 1978. Accordingly, the \$250 civil penalty for each violation  
18 should be affirmed. We are persuaded, however, that payment of the  
19 penalties should be suspended with conditions in view of appellant's  
20 substantial efforts to comply with Regulation I. The purpose of civil  
21 penalties is to secure compliance with the regulation and a person's  
22 good faith efforts to meet and achieve compliance are considered in light  
23 of the circumstances of the case. Appellant, we feel, has made and  
24 intends to make progress toward achieving compliance.

25 II

26 Any Finding of Fact which should be deemed a Conclusion of Law

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 is hereby adopted as such.

2 From these Conclusions the Board enters this

3 ORDER


4 1. Civil Penalty No. 3787 in the amount of \$250 is affirmed and  
5 suspended.

6 2. Civil Penalty No. 3796 in the amount of \$250, and Civil  
7 Penalty No. 3800 for \$250, are each affirmed, and suspended on condition  
8 that within 45 days appellant apply for a variance from respondent's  
9 Regulation I for a period of time necessary to effect control over its  
10 emissions.

11 DONE this 27<sup>th</sup> day of July, 1978.

12 POLLUTION CONTROL HEARINGS BOARD

13   
14 DAVE S. MOONEY, Chairman

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16 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER